(1) Supreme Court, U.S.
FILED

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No. ____

IN THE
SUPREME COURT OF THE UNITED STATES

FREDERICK W. BROKASKI, Petitioner,

v.

DELCO SYSTEMS OPERATIONS, and
GENERAL MOTORS CORPORATION, Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO
UNITED STATES COURT OF APPEAL
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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26 pp

QUESTION PRESENTED

1. Does a District Court, by summary enforcement of a settlement agreement, without first conducting an evidentiary hearing, violate due process of law, when the party resisting the enforcement is representing himself *in pro per*, after being abandoned by his attorney, and asserts that the settlement is not enforceable?

PARTIES TO THE PROCEEDING

All parties to the proceedings below appear on the cover.

TABLE OF CONTENTS

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES v

PETITION 1

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL PROVISIONS 3

STATEMENT OF THE CASE 3

REASONS FOR GRANTING WRIT 8

I. **WRIT OF CERTIORARI IS NECESSARY TO CORRECT A CLEAR VIOLATION OF DUE PROCESS OF LAW, THAT WAS UPHELD BY THE COURT OF APPEAL, WHEN THE DISTRICT COURT SUMMARILY ENFORCED A SETTLEMENT AGREEMENT WITHOUT HOLDING AN EVIDENTIARY HEARING, OVER THE OBJECTION OF THE PARTY RESISTING THE SETTLEMENT, WHO CLAIMS THAT THE AGREEMENT WAS NOT ENFORCEABLE.** 8

CONCLUSION 12

TABLE OF AUTHORITIES

Cases

Callie v. Near (9th Cir. 1987) 829 F.2d 888 8

Fuentes v. Shevin (1972) 407 U.S. 67. 9

Haines v. Kerner (1972) 404 U.S. 519 9

Kukla v. National Distillers Products Co.
(6th cir. 1973) 487 F.2d 619 9

Snyder v. Massachusetts (1934) 291 U.S. 97 9

United Commercial Bank v. Paymaster Corp.
(9th Cir. 1992) 962 F.2d 853 9

Constitutional Provisions

U.S. Const amend. V 3

Statutes

28 U.S.C. § 1254(1) 2

28 U.S.C. § 1291. 2

28 U.S.C. § 1332 2

28 U.S.C. § 1441 2

IN THE

SUPREME COURT OF THE UNITED STATES

FREDERICK W. BROKASKI, Petitioner,

v.

DELCO SYSTEMS OPERATIONS, and
GENERAL MOTORS CORPORATION, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

The Petitioner, Frederick W. Brokaski ("Petitioner"), respectfully prays that the Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, be entered in the above-entitled proceeding on July 24, 2002.

OPINIONS BELOW

The District Court order is reprinted in the Appendix hereto at A-1-A2. The Opinion of the Court of Appeals for the Ninth Circuit is unreported and is reprinted in the Appendix hereto at pg. A-3-A-7.

JURISDICTION

The proceeding below involved a final order of dismissal entered by a District Court in an action removed to the District Court based on diversity, pursuant to 28 U.S.C. §§ 1332 and 1441, and reviewed by the Ninth Circuit Court of Appeal pursuant to 28 U.S.C. § 1291.

Appeal was taken to the Court of Appeal, Ninth Circuit, which entered a judgment and opinion affirming the lower court on July 24, 2002. No Petition for Rehearing was sought.

The jurisdiction of this Court to review the judgment of the Ninth Circuit is invoked 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS

Fifth Amendment to the United States Constitution:

No person shall be . . . deprived of life, liberty, or property, without due process of law . . .

STATEMENT OF THE CASE

This case arises out of Petitioner's Complaint, removed to the District Court for the Central District of California based on diversity, which stated claims for Breach of Contract, Negligent Misrepresentation and Fraudulent Inducement against Delco Systems Operations and General Motors Corporation ("Respondents"). The underlying facts of the Complaint are not relevant to this Petition.

Trial was set for April 10, 2001, and on the District Court's suggestion, went to mediation on March 30, 2001, before a professional mediator. An eight (8) hour mediation produced a document entitled "Settlement Agreement and Release of All Claims." The Settlement Agreement provided that no later than April

9, 2001, that Respondent would pay Petitioner $100,000.00. It also has struck out from the typewritten form that had been prepared ahead of time by Respondents' counsel, language that Petitioner "agrees, that as a condition precedent . . ." to that payment, dismissal of the lawsuit. The Settlement Agreement included a handwritten "Addendum" which instead specified that "The parties agree that the check referenced in paragraph 1 shall be provided to Erin Parks who shall dismiss the underlying lawsuit, with prejudice before releasing the check to Brokaski. Parks will promptly provide proof of such dismissal to counsel for General Motors." The Agreement also provided that disputes arising regarding the Agreement, they would be submitted to binding arbitration.

On April 5, 2001, Respondent filed "Defendant's Ex Parte Application for an Order Shortening Time for Hearing of Motion to Enforce Settlement Agreement, Etc., or to Vacate Trial Date to Allow Such Motion to Be Regularly Noticed and Heard; Declaration of Paul K. Wilcox" and "Defendant's Notice of Motion and Motion to Enforce Settlement Agreement, or in The Alternative, To Continue Trial; Memorandum

of Points and Authorities in Support Thereof ("Motion to Enforce").

In the Motion, Respondent alleged that on Saturday, March 31, 2001, then attorney for Petitioner, Erin Parks ("Parks"), called Respondents' attorney, Paul K. Wilcox, at his home to tell him that Petitioner "did not intend to go through with the settlement." It also stated that on April 2, 2001, that Parks indicated that Petitioner directed her not to accept the settlement proceeds and not to dismiss the action. It also alleged that Parks stated that she intended to withdraw as counsel and that she had told Petitioner that there was no legal basis for his position and that she could no longer represent him. There is no statement of the nature or basis of Petitioner's position and thus no discussion as to why Petitioner's position was invalid. Finally, it alleged that on April 3, 2001, a letter with the settlement proceeds was delivered to Parks.

The District Court set a hearing on the Motion to Enforce Settlement on April 23, 2001. Before the Motion to Enforce Settlement, on April 3, 2001, Parks filed an "Ex Parte Application for Leave to Withdraw as Counsel for Plaintiff, Frederick W. Brokaski." The reason

given was that Petitioner wanted to rescind the mediation settlement. She further revealed attorney-client conversations by stating that she had "advised" him that it was her opinion that there was no legal basis for rescission. Without explanation or necessity, she added, "I could not ethically pursue a frivolous or unmeritorious matter." The Application to Withdraw did not explain the nature or basis of Petitioner's concerns. The District Court rejected the Application to Withdraw and a Substitution of Attorney was filed on April 5, 2001.

The Motion to Enforce was served on April 6, 2001, **by mail**. Without counsel and less than two (2) weeks before the hearing on the Motion to Enforce Settlement, Petitioner filed, *in pro per*, "Opposition to Defendant's Motion for Enforcing Settlement Agreement and Dismissing Jury Trial" ("Opposition").

The Petitioner, in *in pro per* style, attempted to explain the factual background of the case, which was relevant to understanding his expectations of the settlement agreement and that the terms of the written Agreement contradicted those expectations. It also extensively discussed the mediation process and how the

"Addendum" portion of the settlement was included. The Opposition described what occurred after the mediation, including that on April 4, 2001, after Petitioner was told that he was now attorney of record, that he attempted to communicate with counsel for Respondent, but was rebuffed. Even though counsel for Respondent stipulated to Parks' withdraw, the settlement check was not tended to Petitioner personally, by the time provided for by the settlement Agreement, which was one day before the date set for commencement of trial.

The District Court held its hearing on the Motion to Enforce Settlement on April 23, 2001. Petitioner appeared *in pro per.* The District Court, without holding an evidentiary hearing to examine the claims of Petitioner, summarily enforced the agreement and entered its "Order Granting Motion to Enforce Settlement Agreement and Dismissing Action with Prejudice."

Petitioner timely appealed to the Ninth Circuit which affirmed the District Court. The unpublished opinion is set out in the Appendix (pgs. A - 1-A -4).

REASONS FOR GRANTING WRIT

I. WRIT OF CERTIORARI IS NECESSARY TO CORRECT A CLEAR VIOLATION OF DUE PROCESS OF LAW, THAT WAS UPHELD BY THE COURT OF APPEAL, WHEN THE DISTRICT COURT SUMMARILY ENFORCED A SETTLEMENT AGREEMENT WITHOUT HOLDING AN EVIDENTIARY HEARING, OVER THE OBJECTION OF THE PARTY RESISTING THE SETTLEMENT, WHO CLAIMS THAT THE AGREEMENT WAS NOT ENFORCEABLE.

The Ninth Circuit, as many, if not all, of the Circuit Courts of Appeal, holds that a District Court has the inherent and equitable authority to enforce a settlement in an action pending before it. Callie v. Near (9th Cir. 1987) 829 F.2d 888, 890. However, a District Court may only enforce complete settlement agreements; where material facts concerning the existence, or terms of an agreement, to settle are in dispute, the court must hold an evidentiary hearing. Id. Settlements are governed by

principles of local law, even when the pending action involves a federal claim. United Commercial Bank v. Paymaster Corp. (9th Cir. 1992) 962 F.2d 853, 857. While there is a policy favoring settlements, it does not exist when there is a dispute as to entering, or the terms of, the agreement; since under those circumstances, summary enforcement results in inequities where such a dispute exists. Kukla v. National Distillers Products Co. (6th Cir. 1973) 483 F.2d 619, 621. This Court has not yet held whether or not these standards are appropriate.

Due process is violated if a practice or rule "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Snyder v. Massachusetts (1934) 291 U.S. 97, 105. The basic function of due process is to provide "an opportunity to be heard . . . at a meaningful time and a meaningful place," promoting fairness in dispute resolution. Fuentes v. Shevin (1972) 407 U.S. 67. The *pro se* litigant is held to less stringent standards than formal pleadings drafted by lawyers. Haines v. Kerner (1972) 404 U.S. 519, 520.

Petitioner was representing himself without the benefit of an attorney, and without any legal

sophistication. He was handicapped by the fact that his attorney abandoned him and did worse, filed papers with the District Court that stated that he was asking her "to pursue a frivolous or unmeritorious matter." This was not true. It was material to Petitioner that he received the settlement funds within the time provided by the Agreement, which was prior to the date set for trial, and that the case would not be dismissed until after the funds were received by him. If these things did not happen, he wanted to go to trial. Petitioner was willing to settle his case on his terms but if his terms were not satisfied, then to exercise his right to have his grievance heard by a jury.

There was a good faith dispute as to the terms as they existed in the final documentation of the Agreement. Had the District Court held an evidentiary hearing, it could have considered the validity of Petitioner's claim and whether there was an available remedy in light of Petitioner's expectations that he receive the funds within the time provided by the Agreement prior to the trial date, and that no dismissal occur until after he received those funds. The District Court could have also decided that "specific enforcement" of the Agreement meant, pursuant to the

terms of the Agreement, sending the dispute to arbitration for an arbitrator to conduct the evidentiary hearing. Because the District Court did not hold a hearing to consider these issues, it violated Petitioner's due process of law by taking away his right to trial by jury that he held so dear. As a *pro se* litigant, who was abandoned by his attorney, a fact known to the District Court, deference should have further been given to an any inartful drafting in Petitioner's Opposition. Petitioner was never given the full and fair opportunity to present his case on why the Agreement was not enforceable. This is an important issue that has never been decided by this Court. Thus, not only did Petitioner lose his day in court, but he also lost his day in court to challenge the reasons why he lost his day on court. This must be corrected.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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FILED
APR 23 2001
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APR 24 2001

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FREDERICK W. BROKASKI. an individual, Plaintiff v. GENERAL MOTORS CORPORATION, a corporation; and DOES I through 25, inclusive; Defendants.	Case No.: CV-98-5558 RSWL (RCx) **ORDER GRANTING MOTION TO ENFORCE SETTLEMENT AGREEMENT AND DISMISSING ACTION WITH PREJUDICE** Honorable Ronald S.W. Lew

Having considered defendant's Motion to Enforce Settlement Agreement, Or, In The Alternative, to Continue Trial, the court finds that (1) the Settlement

Agreement entered into by the parties and their counsel on March 30, 2001, is valid and enforceable, (2) that defendant General Motors has tendered the settlement proceeds to plaintiff, thereby performing its obligations thereunder, and (3) that plaintiff has breached his obligations under the Settlement Agreement by refusing to dismiss this suit. Accordingly, good cause appearing therefore, the Court grants specific performance of the Settlement Agreement and IT IS HEREBY ORDERED THAT this case is DISMISSED with prejudice.

DATED: 4-23-01

/s/ *RONALD S W LEW*
Ronald S. W. Lew,
United States District Judge

FILED
JUL 24 2002
CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FREDERICK W. BROKASKI, Plaintiff Appellant, V. DELCO SYSTEMS OPERATIONS and GENERAL MOTORS CORP., Defendant - Appellee.	No. 01-55959 D.C. No. CV-98-5558-RSWL **MEMORANDUM***

Appeal from the United States District Court
for the Central District of California
Ronald S. W. Lew, District Judge, Presiding

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Submitted July 11, 2002**

Pasadena, California

Before: HUG, FARMS, and SILVERMAN, Circuit Judges.

Frederick Brokaski appeals the district court's order enforcing a settlement agreement and dismissing Brokaski's lawsuit against General Motors with prejudice. Because the facts are known to the parties, we will not recite them in detail except as necessary. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we review the district court's enforcement of a settlement agreement for an abuse of discretion. *Callie v. Near*, 829 F.2d 888, 890 (9th Cir. 1987). "Reversal is appropriate only if the court based its decision on an error of law or clearly erroneous findings of fact." *Maynard v. City of San Jose*, 37 F.3d 1396, 1401 (9th Cir. 1994) (citation and internal quotation marks omitted). We affirm.

"It is well settled that a district court has the equitable power to enforce summarily an agreement to settle a case

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**This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

pending before it." *Callie*, 829 F.2d at 890. "However, the district court may enforce only *complete* settlement agreements." *Id.* "Where material facts concerning the *existence* or *terms* of an agreement to settle are in dispute, the parties must be allowed an evidentiary hearing." *Id.*

Brokaski argues that the district court should have held an evidentiary hearing before ruling on General Motors' motion to enforce the settlement agreement. We disagree. In this case, there is no dispute over the existence or terms of the agreement. Brokaski does not argue that he did not intend to be bound by the settlement agreement, which he signed, nor does he raise any factual issue regarding the creation of the agreement. Even on appeal, he has not identified any evidence that would put in doubt the existence of the written, signed settlement agreement.

Instead, Brokaski argues that the settlement agreement was invalid due to either a unilateral or mutual mistake. The parties, he argues, misunderstood the law and erroneously believed that Brokaski's lawyer, Erin Parks, had the power to dismiss Brokaski's lawsuit. "The construction and enforcement of settlement agreements are governed by principles of local law which apply to

interpretation of contracts generally." *Jeff D. v. Andrus*, 899 F.2d 753 759 (9th Cir. 1989). Under California law, a settlement agreement is a contract, and the legal principles which apply to contracts generally apply to settlement contracts. *See Gorman v. Holte*, 164 Cal. App. 3d 984, 988 (Cal. Ct. App. 1985).

While Brokaski is correct that Parks could not dismiss a lawsuit with prejudice without her client's consent or knowledge, *see Romadka v. Hoge*, 232 Cal. App. 3d 1231, 1235-36 (Cal. Ct. App. 1991), no such thing happened here. Brokaski knowingly entered into the settlement agreement and initialed the provision that permitted his attorney to dismiss the lawsuit with prejudice upon her receipt of GM's check.

Brokaski also argues that the settlement agreement did not comport with his expectation that he would not have to dismiss the lawsuit until he cashed the check. Again, Brokaski signed the agreement and is bound by its terms. "[I]n the interest of preserving some reasonable stability in commercial transactions, the courts will not set aside contractual obligations, particularly where they are embodied in written contracts, merely because one of the parties claims to have been ignorant of, or to have

misunderstood, the provisions of the contract." *Hedging Concepts, Inc. v. First Alliance Mortgage Co.*, 41 Cal. App. 4th 1410, 1421 (Cal Ct. App. 1996) (citation omitted). Thus, the district court did not abuse its discretion by summarily enforcing the settlement agreement.

AFFIRMED.